

THE IMPACT OF IRREGULAR MIGRATIONS, SMUGGLING AND HUMAN TRAFFICKING ON THE LAND TRANSPORT INDUSTRY: THE CROATIAN CASE¹

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The major migrant crisis, which has been spreading across Europe for the past few years, has also affected Croatia in many ways. A relatively small country in South East Europe that lies on two important transport corridors – Pan-European Corridor Xa and Vb – happened also to be on two big migratory routes: the Western Balkan route and the Mediterranean route. The consequences thereof have been seen in a huge number of migrants who passed over Croatian territory, going towards countries in Western Europe, often found hidden in trucks and trains at the border crossings towards Serbia, Bosnia and Herzegovina, or Hungary.

This paper deals with the question of the impact this phenomenon has made on freight transport industry in Croatia (and the entire region of South East Europe), by analysing regional trends in irregular migrations of people in connection to the introduction of new police security measures (on trucks and trains), and the performance of road and rail transport services in these sensitive times.

Keywords: *irregular migrations; smuggling; road transport; railway transport; clandestine entries; scanners; Balkan route; Eastern Mediterranean route; border crossing points; Schengen area; police inspections; transport safety measures; transport security measures.*

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1. INTRODUCTION

Unprecedented migrations through Europe in the 2010s could mean for road and railway transport the same as terrorism and piracy mean for air and sea transport. Arab spring, a surge of war conflicts and/or unfavourable economic situation in several countries in the Northern Africa as well as some parts of Asia and Middle East, prompted an extraordinary wave of migrations towards the Western European countries. Poorly dressed and equipped for the journey, millions of desperate men, women and children travelled thousands kilometres in order to reach their final destinations, using all possible means to shortcut those long cumbersome parts of their journey. Many tried by paying available transport providers to get transferred somewhere closer to their final point, and many clandestinely entered any available transportation vehicle that was moving in the desired direction.

The migration that had started in 2010 reached its peak in the 2014-16 period, only to decrease after the agreement and closure of the Turkish border². Although less intensive, migrations continue to the present moment. Some of the most popular migrant routes go through the territory of Croatia, the youngest Member State of the EU and a prospective member of the Schengen area. Its favourable transport position and intensive flow of land transport on the one hand, and huge pressure of irregular migrations on its eastern borders (with Serbia and Bosnia and Herzegovina), which are also the outer EU borders, on the other hand, make this contrast an interesting phenomenon.

In this research, we intend to explore the impact of the migrant crisis to land freight transport industry in South East Europe, especially in Croatia. Did the migrant crisis change police security measures used on trucks and trains on border crossing points in combating organised crime? What are these measures and how do they interfere with the performance of transport services? Are there new security measures introduced within transport industry due to the migrant crisis? Furthermore, we wish to explore whether present transport safety measures can help combating irregular migrations, and if so, in which manner. Finally, we plan to explore possible links and connection points between irregular migrations and crimes of smuggling and trafficking in human beings (the THB) in relation to transport industry. We believe transport industry and its services along the migratory route are an extremely important tool that can be used to facilitate the movement of migrants and the clandestine crossing of state borders,

² European Council, EU-Turkey Statement, 18 March 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (20.9.2018).

mostly without consent and/or knowledge. We have found no previous research conducted on these particular points of interest, which makes this research a pioneer one, offering first indications and points for further exploration.

Apart from fundamental scientific and statistical sources, data used as the basis for writing this paper have been gathered by an in-field research based on the method of unstructured interview. The interviews were held during September 2018 with seven people from the railway and road transport sector. Among them, there were five key stakeholders within two major railway freight transport operators, which held together over 78% of Croatian railway services market in 2017.³ Interviews were held with major stakeholders within those companies, working at different levels involved with the organisation of railway transport on border crossings and solving problems arising therefrom, from the CEO and middle management to field engineers. Due to high representation of the market share involved in the survey, the results can be deemed statistically relevant. As regards the road sector, interviews were held with two drivers, each with over 15 years of experience, employed for door-to-door transport by two major Croatian logistic companies, who regularly drive trucks on international routes, including Croatia and the countries in the region (Serbia, Bosnia and Herzegovina, Slovenia, Hungary, Macedonia, and Montenegro). Due to the sample being small, the results obtained in this part of research can only be deemed as an indication, and not decisive conclusions, pending further research. Some of the information regarding the equipment at border crossing points (BCPs) used by border police was obtained particularly for this research from the Croatian Ministry of the Interior, Police Headquarters, Border Police Administration. Due to the sensitive nature of the obtained information, the names of the companies and persons interviewed were omitted in the paper as requested by the interlocutors, but are known to the authors.

This paper has been divided into four chapters. The first chapter offers an overview of the most important statistical information on Croatia and its geographical features, general-transport-related information pertinent for the research, and statistics regarding migration, relevant for the topic. The second chapter deals with the phenomenon of irregular migrations, smuggling and the THB in the region involving Croatian territory, whereas the third chapter offers detailed information on links between transport industry and organised

³ See the Annual Report of the Croatian Regulatory Authority for Network Industries (HAKOM), *Godišnje izvješće o radu Hrvatske regulatorne agencije za mrežne djelatnosti za 2017. godinu*, p. 3, available at <http://www.sabor.hr/godisnje-izvjesce-o-radu-hrvatske-regulatorne-0005> (20.9.2018).

crimes of smuggling and the THB, as well as irregular migrations, providing an in-depth study of different transport safety and security measures used to combat irregular migrations and smuggling, used at Croatian BCPs on land transport vehicles. The fourth chapter explains different ways in which those transport and police safety and security measures impact road and railway transport industry in the region, together with future challenges related to the researched phenomena.

2. TRANSPORT AND IRREGULAR MIGRATIONS IN CROATIA: STATISTICAL BASICS

Croatia is a relatively small country in South East Europe, with a population of 4.2 million inhabitants (2016).⁴ Its territory comprises the land area (56,594 km²)⁵ and a vast sea area consisting of territorial sea and interior seawaters (31,757 km²).⁶ What is more important with regard to this paper's topic is that this relatively small territory has a very unusual horse-shoe (or croissant) shape, which is the reason for the extensive length of land boundaries that Croatia has with the neighbouring countries, counting to 2,370.5 km.⁷ All boundaries, in the total length of 3,318.58 km⁸, are linking Croatia with 6 neighbouring countries: Italy, Slovenia, Hungary, Serbia, Bosnia and Herzegovina, and Montenegro, with a total of 173 BCPs, out of which 126 are opened for international transport.⁹ There are 118 road, 25 sea, 15 railway, 4 inland waterways, and 9 air BCPs.¹⁰ Controlling such a vast land and maritime frontier with 173 BCPs in total is an enormous task for Croatia alone, made even more difficult due to the configuration of the territory and partial impassability of the green and blue

⁴ Hrvatska u brojkama/Croatia in Figures, Croatian Bureau of Statistics, Zagreb, 2017, p. 7.

⁵ Strategija integriranog upravljanja granicom, Art. 2. Karakteristike granice, Official Gazette of the Republic of Croatia, No. 92/2014 of 28 July 2014. See also: Croatian Bureau of Statistics, Statistical Information, Zagreb 2017, p. 7.

⁶ *Ibid.*

⁷ Due to the fact that Croatia has 1,244 islands, its seacoast is 6,278 km long, and the estimated border at sea is 865.7 km. See Ministry of the Sea, Transport and Infrastructure (Ministarstvo mora, prometa i infrastrukture), Otoci i priobalje, <http://www.mppi.hr/default.aspx?id=503> (20.9.2018) and Strategija integriranog upravljanja granicom, *supra* note 5, p. 12.

⁸ Strategija integriranog upravljanja granicom, *supra* note 5.

⁹ *Ibid.*

¹⁰ *Ibid.*

bordering zones. Furthermore, small parts of the frontier with Serbia, Bosnia and Herzegovina and Hungary are still mined after the war in the 1990s.¹¹

Although small, Croatia has an important geo-strategic position, with the longest part of the EU border with non-EU countries. Practically, non-EU countries in the region that lie between Greece and the rest of the EU – Serbia, Bosnia and Herzegovina, Montenegro, Macedonia and Albania – represent the part of Europe in which different legal systems and norms apply. This fact becomes very important when one has to enforce a strong uniform approach in combating challenges presented by organised crime and massive irregular migrations that are taking place in the entire region. One of the most important facts to be noted in this context is that Croatia lies on two major transport corridors. The first one is the (EU) Mediterranean corridor that starts at Gibraltar, in Spanish port of Algeciras, and goes through Spain (Madrid-Zaragoza-Sevilla-Valencia-Barcelona), France (Perpignan-Marseille/Lyon), and Northern Italy (Torino-Milano-Venice-Padova-Venezia-Ravenna/Trieste) to Slovenia (Koper-Ljubljana) and further either directly to Hungary (Budapest) or alternatively through Croatia (Rijeka-Zagreb) to Hungary (Budapest), ending at the Ukrainian border.¹² The Mediterranean corridor is one of the six major TENtec transport corridors in the EU, representing the core transport network linking the EU from the North to the South, and from the West to the East.¹³ Positioning Croatia, with its major (sea) port of Rijeka and its capital Zagreb at one of those corridors, clearly proves the strategic position of Croatia within the EU. The Croatian part of the Mediterranean corridor from Rijeka (through Zagreb) to Hungary equals the Pan-European corridor Vb, which has the same route.¹⁴ In this discussion, we are going to focus especially on the Pan-European corridor Xa due to its importance with respect to the problem of irregular migrations, smuggling and human trafficking by the means of land transport in Croatia. The corridor Xa runs from Salzburg and Graz

¹¹ See the map of mined areas in Croatia at: https://i2.wp.com/welcome.cms.hr/wp-content/uploads/2015/10/Minska-polja_Hrvatska.jpg (13.7.2018).

¹² Mediterranean Corridor, https://ec.europa.eu/transport/modes/rail/ertms/corridors/mediterranean-corridor_en (20.9.2018).

¹³ See the detailed map of the EU TENtec corridors at: <http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/map/maps.html> (23.7.2018).

¹⁴ Pan-European transport corridors have been negotiated at the second Pan-European transport conference in March 1994 in Crete, and altered in 1998. They encompass the whole of the European continent, whereas the TENtec corridors are an EU project and link only the territory of the EU Member States. However, the two networks are mostly the same within the EU, and there are incentives to merge the two systems. See: Ilić, M.; Orešić, D., Pan-European Transport Corridors and Transport System of Croatia, *Hrvatski geografski glasnik*, Vol. 66 (2004), No. 2, pp. 5-22.

(Austria) through Ljubljana and Maribor (Slovenia), over Zagreb (Croatia) and Belgrade (Serbia) to Thessaloniki (Greece), and uses the shortest and geographically most advantageous route for linking Central and South East Europe, since it goes through the plains of the Pannonia valley in a length of 2,300 km.¹⁵

Considering the issue of combating organised crime and irregular migrations, one has to bear in mind several other pertinent facts. Croatia is one of the most popular tourist destinations in the Mediterranean, with a constant growth in this segment of its economy¹⁶, which also contributes to the high figures in passenger transport. On the other hand, a very large community of immigrants from Turkey, Serbia, Macedonia and Bosnia and Herzegovina are living and working in the Western European countries, mostly Germany and Austria. They regularly commute by road in the winter and summer seasons through the Xth corridor, contributing thereby even more to the high figures in passenger transport in Croatia, and putting pressure on Croatian eastern and western land border crossings. The statistics of passenger transport by mode in Croatia state that passenger transport in Croatia in 2017 encountered for 85,829,000 passengers in total, whereas more than a half of it was operated through road transport (49,561 passengers).¹⁷ It was an actual increase from the previous year (2016), where total passenger transport encountered 86,792,000 passengers (which included a large number of transit passengers, i.e. migrants as well)¹⁸, continuing the ongoing trend of a steady growth of passenger transport in Croatia through the years.¹⁹

If we look at the road cross-border traffic by directions, it becomes obvious that the majority of the passenger transport is located at the Croatian-Slovenian

¹⁵ This corridor has been added to this network at the third Pan-European Transport Conference held in Helsinki 1997, after the end of the war in Croatia in the 1990s. *Ibid.*, p. 8.

¹⁶ In the past six years, the number of nights spent in tourist accommodation rose from 60.4 million (2011) to 78 million (2016). See Rašić Bakarić, I., *Sektorske analize*, November 2017, No. 57, at https://www.eizg.hr/userdocsimages/publikacije/serijske-publikacije/sektorske-analize/SA_turizam_studeni-2017.pdf (20.9.2018). Croatia is the EU Member with the highest ratio of travel receipts to GDP (18.6 %). See Eurostat, *Tourism statistics*, at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tourism_statistics#Tourism_expenditure:_highest_spending_by_German_residents (20.9.2018).

¹⁷ Državni zavod za statistiku (Croatian Bureau of Statistics), *Prijevoz putnika i putnički kilometri* (Transport of Passengers and Passenger-Kilometres), tab. 5.2.1.

¹⁸ Croatia in Figures, *supra* note 4, p. 25. According to some reports, 800.000 people passed through Croatia during "migrant crisis" See Sisgoreo, T., *Refugee Crisis in Croatia – Report*, June 2016, <https://www.borderlineeurope.de/sites/default/files/background/Refugee%20Crisis%20in%20Croatia%20Report.pdf>.

¹⁹ In 2013, there were 93,139,000 passengers; in 2014, 90,815,000; and in 2015, 88,810,000 passengers. See: Croatia in Figures, *supra* note 4, p. 25 (Transport of Passengers and Goods).

border (ca 40 million out of the total of ca 76 million), followed by 24.7 million at the Croatian-Bosnian and Herzegovinian border.²⁰ We may conclude that the major axis for the entry and exit of passengers in Croatia is situated between the Slovenian border at the western, and multiple land border crossings with Bosnia and Herzegovina at the eastern and south-eastern end of Croatia.

The major influx of immigrants in the period 2014-2016 went through six corridors (see Figure 1 *infra*)²¹, two of which included Croatian territory: the Western Balkan route that is largely following the Xth transport corridor (from Serbia via eastern Croatian border through the northern part of Croatian territory towards Slovenia), and the Eastern Mediterranean route going from Greece through the southern part of the Balkans (Albania, Macedonia, Montenegro, and Bosnia and Herzegovina) towards the eastern and southern borders of Croatia (mainly with Bosnia and Herzegovina and Montenegro). At the peak of irregular migrations towards the EU in 2015, there were 1,822,177 detections of irregular border crossings.²² In the same year, 885,386 irregular entries were detected on the Eastern Mediterranean route, whereas 764,038 were recorded on the Western Balkan route.²³

In the end, when we put all these figures in the context of combating organised crime and irregular migrations, it is also very important to look at the statistics regarding freight transport. This is due to the fact there is intense freight transport going through Croatia, where in 2016, 72.5 million tons of goods were carried by road, compared to 20.9 million tons carried by sea and 10 million tons carried by railway. Clearly, a part of the transport corridor routes going through Croatia represent vital bloodlines for freight transport and economy in general for many countries in the region of South East Europe and further eastwards. Any disruption in performance of transport in this sensitive part, where the EU borders are indeed meeting non-EU countries, though the area itself has not yet been included in the Schengen area, can be extremely harmful in many ways.

²⁰ Croatian Bureau of Statistics, Tab. 5.7. Road Cross-Border Traffic of Passenger Motor Vehicles and Passengers, by Directions, 2016.

²¹ These corridors were named geographically: the Western, Central and Eastern Mediterranean route, the Western Balkan route, the Black Sea route, and the Eastern Borders route.

²² Risk Analysis for 2017, Frontex Rn 2133/2017, Warsaw, February 2017, p. 16.

²³ "Number of illegal border-crossings between border crossing points (BCPs) to the European Union (EU) in 2015-17, by route", www.statista.com/statistics/454910/illegal-border-crossing-between-bcps-to-the-eu/ (5.8.2018) and "Detections of illegal border-crossing and the EU's external borders 2017", Frontex, Risk Analysis for 2018, Warsaw, p. 18.

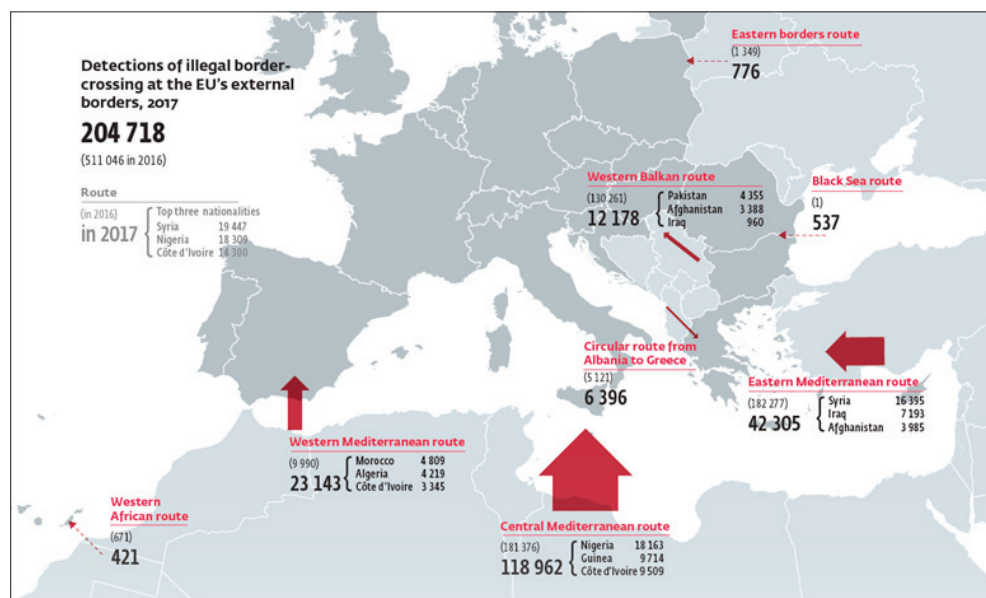


Figure 1: Detections of irregular border crossing and the EU's external borders, 2017.

Source: Frontex, Risk Analysis for 2018, Warsaw, February 2018, p. 18.

3. IRREGULAR MIGRATIONS, TRAFFICKING AND SMUGGLING – REGIONAL TRENDS

Croatian geo-strategic position on the two major transport corridors in South East Europe unfortunately also conditions its positioning on the so-called Balkan route of the organised crime. The Balkan route is a largely used term in connection to all forms of organised crime taking place in, or through, the states situated in the Balkans and in South East Europe: trafficking of drugs, weapons, and human beings, smuggling illegal migrants, cigarettes, etc.²⁴ Croatia is strongly exposed to the Balkan route, since three of its eastern neighbours: Serbia, Bosnia and Herzegovina, and Montenegro, lie on the same route as well. Practically, Croatia's eastern border (as well as the Adriatic Sea) with its entire length is a potential point of risk for the illegal traffic and criminal activities.

²⁴ For the purpose of this text, we will use the term smuggling when referring to organisation of irregular migrations of people. When referring to other types of smuggling, e.g. tobacco smuggling, we will explicitly name it.

Unfortunately, there already exist well-established criminal networks working through the Balkan route, which are connected to different forms of organised crime. Although the major focus of this paper is on smuggling and irregular migrations, those crimes are closely linked to drug trafficking and other forms of organised crime, which makes it important for us to look at the wider picture and some important facts linking different forms of organised crime before focusing in more detail on the crimes of smuggling and the THB.

There is a long history of intensive drug trafficking on the Balkan route, which remains a key corridor for heroin entry into the EU, whereas the overall quantity of Afghan heroin smuggled to Western and Central Europe through all routes is estimated at 80 tons.²⁵ As regards cocaine, approximately 125 tons worth 27 billion EUR are consumed each year, and the drug is being smuggled through transatlantic routes within shipping containers and concealed compartments on various types of vessels.²⁶ There is, therefore, a strong connection between drug trafficking and transport by all modes, since containers are used for intermodal transport, i.e. transport with different modes of transport. Cannabis is largely produced in Albania and other South East European states, and exported to Western and Central Europe via the Adriatic Sea by speedboats and ferries from Albanian ports and land routes through other countries, including Croatia.²⁷ It is therefore safe to conclude that there are strong networks of organised crime groups operating on the Balkan route, Croatia included, which can easily diversify their business by entering the smuggling and the THB market. After the drug trafficking market had become saturated with more organisations (criminal and terrorist) entering the business, the need to diversify their business emerged, and the THB and smuggling were a logical choice for many reasons.²⁸ The entry costs from the drug trafficking to the THB market are low, since one business can be hidden within the other, the logistics and operational networks are already in place and there is often an economy of scale²⁹ (trafficked victims are used as human mules for smuggling drugs, "madams" running brothels can be used for controlling victims of the THB that have been turned

²⁵ UNODC, *Drug Money: the illicit proceeds of opiates trafficked on the Balkan route*, available at https://www.unodc.org/documents/data-and-analysis/Studies/IFF_report_2015_final_web.pdf (22.9.2018).

²⁶ Frontex, *Risk Analysis for 2018*, *supra* note 23, p. 32.

²⁷ *Ibid.*

²⁸ Shelley, L., *The Relationship of Drug and Human Trafficking: A Global Perspective*, *European Journal on Criminal Policy and Research*, vol. 18 (2012), Issue 3, p. 242.

²⁹ *Ibid.*, p. 242.

into prostitutes, etc.). Finally, there is a lesser risk with respect to criminal prosecution involved in the THB, since the penalties for it are in the majority of countries lower than those for drug trafficking.^{30,31}

Evidently, there was a high demand for the THB and smuggling from both source and recipient countries in the last period, and the convergence of drug trafficking crimes to the THB and smuggling by criminal cartels was a logical consequence.³² We have to conclude that the discussion on the impact of the THB and smuggling on transport and its security measures in Croatia needs to be seen within the wider picture, including other tendencies of organised crime in the region, primarily that of drug trafficking. As Shelley points out, Turkish and Balkan groups serve as logistics experts, whereas both groups move drugs and people along the Balkan route that connects Asia with Western Europe.³³ We have therefore had an already established business of drug trafficking going on for decades through Croatia as part of the Balkan route. There was also a strong convergence of this crime into the THB and smuggling during the last decade; this was extremely favoured by the unprecedented migration from Asia and Africa from 2010 on. The question is where the link between the huge wave of irregular migrations that have been going through Croatia in the last years and smuggling and the THB is, and whether and in which manner this trend has an impact on transport industry in Croatia.

The process of the so-called Arab Spring, as a series of violent and non-violent political actions and riots against the established dictatorships and totalitarian regimes in many African countries, started at the end of 2010 and continued at the beginning of 2011. They led to fierce wars in the region of Northern Africa (Libya, Syria) and started the biggest migrations seen since World War II

³⁰ Aronowitz, A., *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Ct. And London: Praeger, cit. acc. to: Shelley, *supra* note 28. The focus of state prosecution on drug related crimes with respect to those of the THB can be easily proved on the Croatian case, where in 2016 only 7 persons were convicted for the crime of the THB (see Art. 106. par. 1 and 3 of the Criminal Code of the Republic of Croatia, Official Gazette, no. 125/11, 144/12, 56/15, 61/15, 101/17) compared to 1290 persons convicted for drug related crimes (those include unauthorized production and circulating of drugs (Art. 190 of the Croatian Criminal Code) and allowing consumption of drugs (Art. 191 of the Croatian Criminal Code). See Croatian Bureau of Statistics: 1605 Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2016, Zagreb 2017, p. 20 and 72.

³¹ The same trend is reported also for other countries all over the world. See: Shelley, *supra* note 28, p. 242.

³² Aronowitz, cit. Acc. to Shelley, *supra* note 28, p. 242.

³³ *Ibid*, p. 248.

towards the Western European countries.³⁴ The wars and harsh economic situation in many other Asian and African countries (Eritrea, Nigeria, Afghanistan, Iraq Iran, etc.) pushed people from these countries towards irregular migrations, creating an unprecedented flow of migrants and pressure at the southern and eastern EU borders.³⁵ As mentioned earlier, the major influx of immigrants went through several corridors, two of which included Croatian territory: the Western Balkan route and the Eastern Mediterranean route.

In 2015, at the beginning of the migrant crisis, Europe was outraged when 71 dead body of Syrian migrants (59 men, 8 women and 4 children) were found in a 7.5-ton truck at the Austrian highway.³⁶ They died of suffocation during their voyage through Hungary, where they entered via Serbia. Seven people were detained and charged with the crime of smuggling and other illegal acts. It was reported that in this period, Serbian and Bulgarian drivers were known to have been entering Hungary with empty trucks and collecting migrants several kilometres from the border in order to transport them further towards the Western European countries. The money paid for these services ranged between several hundred and several thousand Euros. In this period, in the course of only one month – August, Hungarian police arrested 30 people, seized 16 vehicles and found 112 illegal migrants in them.³⁷ Very soon, Hungary closed its green and blue borders with Serbia completely, so the migration flow was diverted southwards, towards Croatia. Obviously, the enormous wave of migrations from the East and the South very soon started to intertwine and provoke the growth of the smuggling market.

It is well known that it is extremely difficult to differentiate the crime of smuggling from the one of human trafficking at this stage of migration pro-

³⁴ Lehmann, J.-P., *Refugees And Migrants: Europe's Past History And Future Challenge* (Forbes), <https://www.forbes.com/sites/jplehmann/2015/09/02/refugees-migrants-europes-past-history-and-future-challenge/#3f97fe56a7d4> (22.9.2018).

³⁵ More on those trends see: Nikač, Ž.; Božić, V., *Suzbijanje kaznenih djela ilegalnih migracija na području regija s posebnim osvrtom na Republiku Hrvatsku i Republiku Srbiju*, *Pravna riječ*, vol. XIII, no. 48, 2016, pp. 193-219.

³⁶ Harding, L., *Hungarian police arrest driver of lorry that had 71 dead migrants inside* (The Guardian), <https://www.theguardian.com/world/2015/aug/28/more-than-70-dead-austria-migrant-truck-tragedy> (22.9.2018).

³⁷ Blic - Miličević, I.; Radisavljević, D. for Telegraf.rs, *UŽASNI DETALJI ISTRAGE: Migranti koji su se ugušili u kamionu, došli iz Srbije! Mrtva tela vožena 200 kilometara!*, at <http://www.telegraf.rs/vesti/1728706-uzasni-detalji-istrage-migranti-koji-su-se-ugusili-u-kamionu-dosli-iz-srbije-mrtva-tela-vozena-200-kilometara> (7.8.2018).

cess.³⁸ Hence, all three have to be observed together as part of the same process, which is strongly linked to transport industry. In the following years, the numbers referring to migrations decreased steeply, mainly due to the EU-Turkey agreement that came into force in March 2016, in which Turkey agreed to secure its maritime and land borders, and accept the return of irregular migrants from Greece.³⁹ This discouraged migrants from taking the Eastern Mediterranean route for their passage, and, together with other security measures taken at the borders of countries along the Western Balkan route, led to a significant decrease in the number of irregular border crossings on those routes.⁴⁰ In 2016, 511,046 irregular migrations were detected, which is approximately a 70%-decrease in comparison with the previous year.⁴¹ In 2017, the overall number fell to 204,718, a 60%-decrease compared to the previous year.⁴² This decrease was largely due to the lower number of detections on the Eastern Mediterranean and Western Balkan routes (see Figure 1 *supra*), where the decrease in numbers between 2015 and 2017 was drastic.

The detected irregular border crossings at the EU external border took place mostly at Serbian borders, where many migrants stranded there made several attempts to cross to the neighbouring countries.⁴³ This put Croatia in a very vulnerable position regarding irregular migrations, since all migrants taking both the Eastern Mediterranean and Western Balkan routes have to cross its territory in order to reach the Western European states, their usual final destinations. The pressure can easily be highlighted by the fact that in less than four months of 2015, in a country with the overall population of roughly 4.2 million inhabitants, 559,761 migrants entered its territory⁴⁴, creating a major humanitarian and secu-

³⁸ Desperate Journeys: January 2017-March 2018, UNHCR, March 2018, p. 13 (hereinafter: UNHCR Desperate Journeys), Report available at <https://reliefweb.int/report/world/desperate-journeys-january-2017-march-2018> (20.9.2018). For definitions (and delineation) of smuggling and human trafficking see Božić, V., *Krijumčarenje ljudi i trgovanje ljudima u hrvatskom kaznenom zakonodavstvu i sudskoj praksi (analiza stanja de lege lata uz prijedlog de lege ferenda) / Human Smuggling and Trafficking in Croatian Criminal Legislation and Jurisprudence (analysis of the situation de lege lata with proposals de lege ferenda)*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, v. 36 (2015), no. 2, pp. 847 and 853.

³⁹ See *supra* note 2.

⁴⁰ Frontex, Risk Analysis for 2017, *supra* note 22, p. 8.

⁴¹ See Frontex, Risk Analysis for 2018, *supra* note 23, p. 18 ("Detections of illegal border-crossing and the EU's external borders, 2017").

⁴² *Ibid.*

⁴³ Frontex, Risk Analysis for 2018, *supra* note 23, p. 19.

⁴⁴ MUP RH: Godišnje izvješće o radu za 2015. godinu, Zagreb, June 2016, p. 58. Cit. Acc. to: Nikač, Božić, *supra* note 35, p. 205.

rity problem. There is the question whether these are the real numbers of people illegally migrating through this region, having in mind that there are also the dark numbers that should be taken into account. The UNHCR reports in 2018 that "...of those crossing the Balkans where numbers of arrivals are difficult to record as most try to cross borders undetected, the implementation of new detention measures by Hungary combined with its existing border restrictions contributed to increased numbers of refugees and migrants resorting to different routes (...).⁴⁵ While many still tried to cross to Hungary, others sought to move on irregularly from Serbia via Croatia as well as at times through Bosnia and Herzegovina to Croatia in the latter part of the year."⁴⁶ In the same report, the UNHCR clearly establishes a link between the irregular migrations through the Western Balkans with the crimes of smuggling and the THB when stating that "...in 2017, many refugees and migrants reported suffering abuses at the hands of traffickers, smugglers or armed groups along various routes to Europe. (...) Amongst those travelling from Turkey and through the Balkans, there were several reports of groups being held against their will and mistreated by smugglers seeking additional fees above what was previously agreed. Women and girls, as well as some men and boys, faced particular risks of sexual and gender-based violence (SGBV) along routes to Europe as well as in some locations within Europe. Along routes to Greece, the risk of SGBV during the journey was relatively high, especially for women travelling on their own and unaccompanied children. While SGBV is in general highly under-reported, more than 300 SGBV incidents that occurred during the journey from their country of origin were reported to UNHCR Greece in 2017, including a high rate of rape, sexual assault and trafficking."⁴⁷

Clearly, the modern trends of smuggling and the THB in the Western Balkans are closely interrelated to the flows of irregular migrations, and the data and trends on these crimes has to be extracted from the relevant information regarding migrations. In other words, these phenomena form today a part of the same discussion. Unfortunately, it has been seen in many cases how illegal migrants became victims of smugglers or traffickers. The line between the last two is extremely thin; it is hard to know if a person was "only" smuggled or whether the smuggler undertook any actions that might characterise him as a trafficker.⁴⁸

⁴⁵ UNHCR Desperate Journeys, *supra* note 38.

⁴⁶ *Ibid*, p. 9.

⁴⁷ *Ibid*, p. 13.

⁴⁸ Both of those criminal acts are subject to the United Nations Convention against Transnational Organized Crime (United Nations, 15 November 2000, Treaty Series, vol. 2225,

However, there is another very important issue that needs to be highlighted. Although the indicators of irregular migration through the EU territory seem to be in significant decline in 2017, the data concerning the asylum seekers cast a dark cloud over this picture. According to Frontex, the asylum data from those Member States of the EU reached by migrants that have previously crossed the Western Balkan countries, point to a continuing secondary (undetected) flow through the region. For example, in 2017, as much as 78,000 Afghan, Iraqi and Pakistani nationals applied for an asylum in the EU Member States, yet only 13,800 of them had been previously detected entering the EU through the Eastern Mediterranean route and 8,700 using the Western Balkan route.⁴⁹ How could have the rest of them, roughly 55,000, reached the EU states undetected? Clandestine entries and movements through the state borders along the Western Balkan route are obviously extensive. Where did the system leak? Does this have anything to do with the usual flow of transport by road and railway, and if so, in what manner?

4. WHAT IMPACT DO IRREGULAR MIGRATIONS HAVE ON LAND TRANSPORT IN CROATIA?

With the outbreak of the migration crisis along the Balkan and Eastern Mediterranean routes as of 2015 onwards, transport industry and its vehicles became a very attractive means for clandestine border crossing for illegal migrants, whereas the operator and/or the driver of the vehicle remains oblivious to this activity until the migrants are discovered hidden within the cargo or the container, in truck or train wagon. What is commonly known in maritime and aviation industry as stowaways⁵⁰ is now spreading and becoming a trend

p. 209) and Protocols thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air). Under the latter Protocol, smuggling of migrants means the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Art. 3a), while the trafficking in persons, under the former protocol, means "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (...)".

⁴⁹ These nationals migrate through Turkey, therefore using only those routes for irregular migrations. Frontex, Risk Analysis for 2018, *supra* note 23, p. 28.

⁵⁰ See Ruwantissa I. R. Abeyratne, *Smuggling of Illegal Migrants by Air – Air Carrier Liability* (2000) 25 *Air and Space Law*, vol. 25 (2000), Issue 4/5, pp. 148-158.

primarily in road and railway transport. This fact has created a strong link between irregular migration, smuggling and possibly the THB on the one hand, and transport industry, which had not existed (or not to this extent) before, on the other. Clandestine entries by trucks or trains via BCPs along the Balkan route rose considerably during 2017, after significant manpower and technical resources were engaged to better monitor the so-called green and blue border (woods and rivers) between Croatia and its neighbouring countries, particularly Serbia and Bosnia and Herzegovina. The previously unusual method of entering the country illegally – using regular BCPs – became the preferred method. Obviously, the control of the green and blue Croatian border became far more efficient, steering the major migrant flows towards regular transport routes and putting the land transport under a great risk and police scrutiny, with unforeseeable economic consequences.⁵¹

From 2009 to 2017, the number of clandestine entries at BCPs detected in the EU had increased by 85%. With only 296 in 2009; it rose steeply to 3,052 in 2014; reached its peak of 4,201 in 2015; only to decrease to 2,219 in 2016; and finally to 1,618 in 2017.⁵² The steep decline in clandestine entries from Turkey to Bulgaria from 2015 on was due to the closed green-blue Hungarian border with Serbia (fence), which created a diversion of migrants to the Balkan route and the Serbian-Croatian border, where the number of detected clandestine entries rose significantly.⁵³ According to the report of Croatian customs authorities, in 2016, only 80 persons were discovered during an attempt of illegal border crossing at BCPs⁵⁴, while in 2017, this number rose to 448 persons⁵⁵, although (as already

⁵¹ The Croatian Ministry of the Interior communicated to the Government the need to procure 60 off-road vehicles, QUAD vehicles and drones for better control of green and blue border, but only in April 2017, and public procurement in the amount of 9.6 million EUR was realised in 2018. This communication was a consequence of as much as 98 recommendations by the EU Schengen evaluators that had to establish the level of readiness of Croatian police forces to control the state border. The evaluators suggested that Croatian police forces used more hi-technology in their work for the control of wast and inaccessible parts of the border. See: <http://www.novilist.hr/Vijesti/Hrvatska/MUP-RAZMATRA-NABAVU-DRONOVA-Hrvatske-granice-ce-nadzirati-bespilotne-letjelice> (5.9.2018).

⁵² "Clandestine entries at border-crossing points (BCPs) detected in the European Union (EU) from 2009 to 2017", www.statista.com/statistics/454802/number-of-clandestine-entries-at-bcps-to-the-eu/ (5.8.2018).

⁵³ Frontex, Risk Analysis for 2018, *supra* note 23, p. 20.

⁵⁴ Izvješće o radu carinske uprave za 2016. godinu, Carinska uprava RH, Zagreb, February 2017, p. 25.

⁵⁵ Izvješće o radu carinske uprave za 2017. godinu, Carinska uprava RH, Zagreb, January 2018, p. 26.

mentioned) irregular migrations were generally in steep decline then. During the same period, the press extensively reported on clandestine entries to Croatia involving land vehicles.⁵⁶ After having been stuck for months in the camps at the Serbian-Croatian border or the Bosnian and Herzegovinian-Croatian border, they tried to get out of this situation and reach their final destinations by hiding within legitimate cargo in vehicles or train wagons.⁵⁷ The fact that the accommodation centre for illegal migrants in Croatia's capital Zagreb is situated in the closest vicinity of the marshalling yard, allowing migrants to board the ongoing trains very easily, does not help the situation at all.⁵⁸ When it comes to railways, the major problem is the Croatian-Serbian BCP of Tovarnik-Šid, situated on the Xth corridor, where incidents with migrants illegally boarding trains occurred daily during 2017, with a decrease in 2018, following more stringent police inspections. On railway BCPs between Croatia and Bosnia and Herzegovina, there are practically no detected migrant incidents, making this way and route of irregular entry obviously far less attractive.⁵⁹

4.1. Human Victims

Migrant crisis does not come only at economic cost; it costs lives as well. Many times illegal migrants are discovered only after their cries for help coming from vehicles or containers⁶⁰ had been heard. Sometimes, however, unfortunate-

⁵⁶ Butigan, S., U Hrvatsku pokušavaju ilegalno ući skriveni u vagonima s brašnom, at <http://www.glas-slavonije.hr/312208/1/U-Hrvatsku-pokusavaju-ilegalno-uci-skriveni-u-vagonima-s-brasnom> (20.9.2018); Vežnaver, F., Deset ilegalnih migranata u vagonu iz Karlovca stiglo u riječku luku, at <http://novilist.hr/Vijesti/Crna-kronika/Deset-ilegalnih-migranata-u-vagonu-iz-Karlovca-stiglo-u-rijecku-luku> (20.9.2018).

⁵⁷ OTKRIVENI ILEGALNI MIGRANTI NA JANKOMIRU: Danima su se skrivali među teretom, spasio ih poziv u pomoć, at <https://net.hr/danas/crna-kronika/otkriveni-ilegalni-migranti-na-jankomiru-danima-su-se-skrivali-medu-teretom-spasio-ih-poziv-u-pomoc> (20.9.2018).

⁵⁸ They are accommodated at the Red Cross facility on the outskirts of Zagreb, in the closest vicinity of the marshalling yard.

⁵⁹ The interviewed carriers are mainly operating via BTCs at the northern border of Bosnia and Herzegovina with Croatia (BTC Šamac and BTC Brčko-Drenovci), and the southern border (BTC Ploče). At the BTC Šamac there was only one migrant incident in 2018. Both of those routes are less attractive for migrants since they are very far from the Slovenian border. On the other hand, railway transport via the BTC Volinja, which is very close to the border, is used very rarely or not at all.

⁶⁰ Balen, V., Krili se u vagonu: Svih 20 ilegalnih migranata zatražilo azil u Hrvatskoj, at <https://www.vecernji.hr/vijesti/krili-se-u-vagonu-svih-20-ilegalnih-migranata-zatrazilo-azil-u-hrvatskoj-1108007> (20.9.2018).

ly, only their dead bodies are discovered.⁶¹ The usual reason of death is dangerous nature of the cargo within which they have been hiding, lack of water and/or exposure to heat during the summer, or exposure to cold during the winter. Humanitarian workers at immigration camps report that the only way for the migrants from various countries that have reached Serbia or Bosnia and Herzegovina to cross the Croatian border and reach the Western European countries is by using services of smugglers or by hiding within trucks or wagons⁶², whereas the latter option entangles great risk, but is free.

The major problem arises, however, more to the East, at the borders with greatest risk of irregular entries of immigrants: those between Bulgaria and Serbia, as well as between Macedonia and Serbia. Serbian officials report of proactive measures taken to prevent migrants from reaching Serbia in the first place, by organising joint border police task forces from various countries helping Serbian police at the Bulgarian-Serbian border (cooperation with Slovenian, Austrian, and Slovak police forces), as well as at the Greek-Macedonian border (where Serbian police officers help local police forces).⁶³ According to Serbian Chief Police Advisor Radiša Ristović, as much as 60% of illegal migrants are detected at Serbian borders, whereas the rest are detected (and returned to Serbia) at Croatian borders.⁶⁴ A specimen of 100% illegal immigrants to whom this statement refers includes, of course, only the discovered migrants. Migrants are mainly taking the so-called green and blue line to cross illegally between countries (i.e. outside the legal border crossings).

Looking westwards from Croatia, during the migration peak period of 2015-2016, the attempts of clandestine entries by land transport vehicles to Austria

⁶¹ See *supra*, p. 113 and footnote 36.

⁶² Dženana Kalamujić from the association "Are you Syrious" in Skopin, I., Migrantsi opet umalo stradali u vagonu s bitumenom: policija i vatrogasci u Karlovcu jedva spasili jednog dok su drugi bježali, 24 August 2017, <https://vijesti.rtl.hr/novosti/hrvatska/2713435/migranti-opet-umalo-stradali-u-vagonu-s-bitumenom-policija-i-vatrogasci-u-karlovcu-jedva-spasili-jednog-dok-su-drugi-bjezali/> (3.8.2018).

⁶³ Video-report of speech by Radiša Ristović, Chief Police Adviser, Head of the Border Department, Republic of Serbia at "Panel 2: Border crossings - procedures and examples of good / bad practice, 5th Business Conference: Transport & Logistics of South East Europe and Danube Region – TIL 2018", Belgrade, 22 March 2018, <http://www.massmediainternational.rs/Video-TIL2018> (3.8.2018). According to the same source, during 2017 one million of migrants entered Serbia, which did not interfere much with the general flow of passenger transport in Serbia, which amounted to 68 million in 2017.

⁶⁴ Ristović Video-report, *ibid*.

and Italy were so huge that Austria introduced stringent measures and started inspecting all trains coming from Italy, especially during the night. The major question remaining is the following: What is the grey number we are talking about? Our previous analysis has shown that less than 20% of asylum seekers in the Western European states, who used the Western Balkan route to enter the region, had previously been identified and registered. The rest of them either used facilitators (smugglers), or were successful in clandestine entries. No data can be found on the percentage of migrants that use one or the other way for irregular border crossing, but we know that the number of facilitators in the period 2009-2017 showed considerably smaller oscillations⁶⁵ than the statistics on clandestine entries in the same period, as shown above. The use of facilitators along the migration route is financed through the traditional Islamic system of hawala, based on honour and trust, which allegedly functions very well in practice.⁶⁶ Those with no means have to revert to a much riskier, yet obviously quite successful, practice of clandestine use of trucks and trains on their legitimate routes through different countries. All this may lead us to the conclusion that clandestine entries using (land) transport vehicles is presently a preferred means of irregular border crossings, and a neuralgic spot for secondary (undetected) movements of migrants along the Balkan route and the Eastern Mediterranean route. How are the countries on the Balkan route, in particular Croatia, which is in focus of this discussion, fighting this newly raising trend? What measures and technical equipment are being implemented by the police forces and the customs to detect illegal migrants, and are those measures adversely affecting regular transport operations? Can they only be described as police and customs border control measures, do they originate from the spectra of transport security measures, or is it a hybrid between the two?

⁶⁵ Number of facilitators in the EU throughout the years: 2009 (9,170), 2010 (8,630), 2011 (6,960), 2012 (7,720), 2013 (6,900), 2014 (10,230), 2015 (12,020), 2016 (12,620), 2017 (10,210). See: Statista, Illegal immigration facilitators detected in the European Union (EU) from 2009 to 2017 (in 2,000 people), www.statista.com/statistics/454817/number-of-facilitators-of-illegal-eu-immigration/ (3.8.2018).

⁶⁶ See Van de Bunt, H., The Role of Hawala Bankers in the Transfer of Proceeds from Organised Crime, in: Siegel, D. and Nelen, H. (eds.), *Organised Crime: Culture, Markets and Policies*, New York: Springer, 2008, pp. 113-126.

4.2. Transport Safety and Security Measures in Combating Irregular Migrations

The border crossing procedures for trucks and trains carrying cargo are extremely versatile and involve both the police and the customs activities.⁶⁷ The whole process of crossing the state border in an international freight transport involves the presentation of numerous documents, which can generally be divided into three categories, with some variations between road and rail transport. The first group of documents needed are those relating to cargo itself, the second relate to the vehicle, and the third group of documents are those linked to the driver personally. Some sources mention as much as 54 documents in total, whereas will never all of them be needed for an individual freight transport case.⁶⁸ The reason for such numerous documentation has its roots in a complicated network of rules and measures related to modern international freight transport, envisaged by a large number of legal acts governing transport and international trade (e.g. export-import documents, transport documents, operator's transport permits, driver's certificates, etc.). The reason for other measures lies in the need for preserving public order and health (e.g. veterinary, phytosanitary and quarantine inspections, fighting organised crime, immigration, etc.).

Procedures at border crossings to check relevant documents by different authorities and, if needed, the physical inspection of the vehicle, are lengthy, and thus inevitably influence the flow of transport. Apart from some older and more traditional measures that have been existing in transport for a longer time, modern challenges, such as raising the threats of terrorist attacks conducted primarily by transport means (such as 9/11, and more recent attacks by trucks in different EU countries), as well as organised crimes of drugs and weapons, smuggling and the THB, have provoked the sophistication of the existing transport-related measures intended to fight these crimes or the introduction of new ones.

It is sometimes difficult to draw a precise line between different categories of measures that might be of interest to this discussion according to their primary source or authority enforcing it. For example, traditionally, most of the measures involving physical inspection of the cargo are performed by the customs, since

⁶⁷ The police are allowed to inspect vehicles, including the inspection of the outer and inner part of the vehicle and research of the police databases, using technical tools and dogs. Art. 27 par. 1 al. 3; Art. 27. par. 4 of the State Border Monitoring Act (Zakon o nadzoru državne granice), Official Gazette of the Republic of Croatia, no. 83/13, 27/16.

⁶⁸ "Model on Integrated Controls at Border Crossings", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), 2012, p. 20 at: https://www.unescap.org/sites/default/files/MICBC-fulltext_0.pdf (5.8.2018).

the identification of cargo as declared in the documents traditionally falls within their jurisdiction, which also means adequate technical equipment for cargo inspection by the customs (e.g. scales and x-ray scanners). In order to best allocate the technical resources, as well as to save time for the carriers, the border police, which has recently been faced with a very high threat of illegal migrants hiding within the cargo, now works closely with the customs and uses the data collected by their work, or performs its own inspections by the customs' equipment in order to detect possible criminal activities performed by or within the transport vehicles. The two authorities have therefore become more and more interdependent in their everyday work, and have to be perceived together with respect to fighting the organised crimes in question. Since an all-encompassing analysis of all the measures related to international freight transport is far beyond the scope of this paper, we will single out some of the measures used in land transport that, in our opinion, might help combat organised crimes of human trafficking and smuggling. We will also analyse how the new surge of those types of organised crimes influences further development of security measures and border police inspections performed on land transport vehicles.

a. Physical inspection⁶⁹

Physical inspection remains the basic method of police inspection combating irregular migrations. It is the only method used to inspect the interior of both laden and empty wagons in railway transport, and the inspection of empty vehicles and containers, as well as non-sealed laden trailers in road transport.⁷⁰ When it comes to laden and sealed trucks and containers, outer physical inspection of the truck is the only one out of many inspection methods used to detect suspicious cargo or other aberrations from the norm and subject the cargo to other inspections, the last of which is physical inspection of the interior of the vehicle or container, including breaking of original seals.

Before the outbreak of the migration crisis, physical inspection of trains and trucks at the border was minimal (for trains), and usually performed swiftly. For example, prior to the migrant crisis, a train crossing from Serbia to Croatia had to stop only at the Serbian border at the BCP Šid, where the inspection crew

⁶⁹ Most of the technical inside information have been gathered from interviews with Rail Cargo Logistics and/or HŽ Cargo, if not stated otherwise.

⁷⁰ The cargo carried within the Single Market does not have to be sealed for customs reasons. It is up to a consignor to decide whether they will seal the cargo or not for security reasons (protection against the theft) during carriage within the EU.

from both Serbian and Croatian railway operators inspected the integrity of the seals on the laden wagons in order to take over the composition from the previous to the next carrier in charge of the transport. The train then continued its journey to the town of Vinkovci deep within Croatian territory, where Croatian authorities would perform the rest of the formalities. After the outbreak of the migrant crisis, a new railway BCP was established in Tovarnik, on Croatian side of the border, where police and customs inspections have been performed ever since.⁷¹ Croatian police forces perform the physical inspection of laden wagons by breaking the original seals on wagon doors and opening them, and then re-sealing them with new seals, as well as entering this change into the consignment note.

Taking into account that in railway transport, the number of seals can be large, because all entry openings (shafts, doors, windows, etc.) on every wagon have to be sealed, and there can be more than 20 wagons in one composition, this whole procedure may take up to several hours.⁷²

Similarly, in road transport, the duration of the physical inspection of trucks is drastically extended, due to numerous ways in which migrants are finding their way into the cargo space of the vehicles. High police sources in Serbia and Croatia report immigrants cutting the iron cords that secure the tarpaulin of the truck to enter the vehicle, where the person remaining outside of the truck then repairs the iron cord by using glue and needle. The physical inspection of the truck is therefore performed by strongly pulling the cord securing the tarpaulin and checking its integrity. The other path that migrants use is by cutting the upper side of the tarpaulin and getting inside the vehicle, which makes the inspection of tarpaulin with telescopic mirrors from the upper side of the truck necessary. Sometimes, migrants heat the plastic cord of the seals on the cargo or the vehicle doors to soften and open them in order to penetrate into the vehicle and hide among the cargo, or just break the seals for the same reason. The

⁷¹ According to Art. 11 par. 4 of the State Border Monitoring and Protection Act, the border crossings on railways have to be built and equipped at the expense of the operator. According to Art. 4 par. 4 al. 3 of the same Act, in this case it would be the operator of railway infrastructure in Croatia, "HŽ-Infrastruktura".

⁷² During the routine check of the train wagons at the Macedonian-Serbian border, 6 migrants have been discovered after they escaped through the wagon floor. Between the rails and the wagon floor there are plankings and metal bars through which the immigrants have entered the wagons. See *Ilegalni migranti u kamionima, ali i u praznom teretnom vozu*, <http://plutonlogistics.com/spedicija/ilegalni-migranti-u-kamionima-ali-i-u-praznom-teretnom-vozu/> (3.8.2018).

person remaining outside the vehicle then repairs the seal to the best of their abilities, forcing the police to check the integrity of every seal during border inspections, which prolongs the procedure.⁷³ All these facts have to be taken into account when considering the time needed for a proper and thorough physical inspection of every truck and freight train.⁷⁴

Changing of seals during transport presents another problem, apart from being time-consuming. The ID number of the seal placed originally at the place of departure by the consignor or the operator⁷⁵ is entered into the transport documents. The consignee will have to ascertain that it is the same number on the seal upon the arrival of the goods at the destination in order to accept the delivery of the cargo. Broken or replaced seals during transport can eventually entangle the liability of the carrier for any damage or loss of cargo under the applicable law, with very limited possibilities for exoneration. The exception is where the seals were broken on orders of public authorities, the customs or the police, where the position of the carrier changes. It is not entirely clear from the conducted research whose seals are used to reseal the wagons (whether the customs' or the operator's), and why. In some cases, resealing of wagons is being done by the customs, whereas in others, the operator himself puts new seals. The difference between the two cases for the position of the operator in case of damages can eventually be pivotal. In both cases, the police issue a formal record of the procedure to the operator.

There are two more issues involving the sealing of the vehicles or containers that have to be mentioned at this point, even if the seals have been tampered with and repaired afterwards by the accomplices outside the vehicle. First, one has to bear in mind that people inside the sealed vehicle (or container) cannot get out without help from outside. This is why they are often discovered only after their cries for help or banging are heard or not before they die trapped inside the vehicle. Secondly, there were also cases of migrants being discovered in trains with intact original seals. This inevitably provoked many questions as to the possible involvement (fraudulent or not) of the personnel present at loading

⁷³ Police report obtained for the purpose of this investigation by the Border Administration, Police Headquarters, Ministry of the Interior of the Republic of Croatia, Kl. 212-02/18-01/88, No. 511-01-62-18 of 7 September 2018, Zagreb. Also: Ristović video-report, *supra* note 63.

⁷⁴ In railway transport, the risk of clandestine entries into the wagons exists for all types of wagons, and even – in rare cases – tanker wagons.

⁷⁵ In railway transport, the wagons are sealed with operator's seals. Exceptionally, the operator can accept for carriage wagons already sealed by the consignor if previous agreement between the two parties to that effect exists.

and sealing cargo at the departure point. The loading of a 20-wagon train composition with heavy cargo is a lengthy and time-consuming procedure, which may take even a couple of days. The composition is sealed at the end of loading, opening the possibility for a person to enter into the previously laden wagon before the end of loading and sealing. If, however, there is a fraudulent involvement of a consignor's or an operator's personnel in this activity, we have a point of conversion of irregular migration into a crime of smuggling and forming of new opportunistic networks of smugglers. There is no definite proof, though, for such behaviour to this point.

In the period before 2015 and the introduction of stringent border police inspections involving unconditional opening of all wagons for physical inspection, it was possible for successive carriers to take over the composition with intact seals and hidden migrants that get discovered during their period of liability. The physical inspections of vehicles at the BCPs in road transport are used as the first method to detect suspicious vehicles in order to subject them to other types of inspections elaborated below. However, in railway transport, physical inspections are the only type of security procedure undertaken by Croatian police forces upon entry into its territory and hence into the EU, but eventually a very costly one for the carrier. On many occasions, the police ordered the carrier to empty the wagons laden with cargo, e.g. timbering, or cargo packed in boxes or sacks, in order to ascertain that nobody was hidden within. After the inspection, the cargo needs to be laden again, and all this has to be performed by the carrier's crew. For this reason, one of the operators working with this type of cargo on this relation had to employ six people full-time at the BCP Tovarnik only for the performance of this manual work and assisting the police in their inspections. The costs, of course, have to be borne solely by the operator, increasing already enormous extra side-costs caused by migrants in railway transport. Lastly, the police have issued special instructions as to the stowage of some types of cargo in order to allow free passage of police officers between stacks of cargo within the wagon (leaving empty passages between, e.g., timber and boxes). Although understandable from the security point of view and fulfilling the crime-fighting purpose, such stowage renders cargo prone to damage during transport, leads to insufficient use of cargo space and increases the risk of the carrier's liability for damage.

b. Vehicle weight and dimension control⁷⁶

The rules on weights and dimensions of trucks, buses and coaches represent a very important part of road safety in the European Union. Their aim is to ascertain that vehicles entering the traffic system of a country comply with rules on maximum weights in road transport, in order to prevent damaging of roads, bridges and tunnels by very heavy or overloaded vehicles, as well as to ascertain fair market competition and free movement of goods within the single market in road transport. In some countries, weighing of vehicles is used also for tax purposes, since taxes are paid based on the weight of the cargo loaded.⁷⁷ Main rules for vehicle weights and dimensions in road transport have been set by the Directive (EU) 2015/719⁷⁸, complemented by several other legislative acts.⁷⁹

Vehicle weighing is performed for two major reasons at all BCPs in Croatia for heavy road vehicles by the use of two different scales. The first scale measures the axle pressure of a vehicle very slowly moving above it, in order to ascertain that the pressure on every single axle is not beyond the prescribed limit, and can be characterised as a (transport) safety measure. The other scaling is performed by a fixed platform scale, where whole immobile truck is being measured in order to ascertain that its gross weight is not beyond the prescribed limit and that the net weight of the cargo is consistent with the weight declared by the transport documentation, which represents a combination of transport safety and the customs' measure. The deviation of 2% maximum is allowed, mostly due to the oscillations in the weight of the fuel in truck tanks and the personal weight of the driver. In practice, usually the deviation up to 500 kg is tolerated.

In order to shorten the border procedures and avoid the infringement of the EU legislation dealing with the intra-EU road transport and the shortcomings

⁷⁶ Inside information and technical details on certain procedures regarding this measure have been collected through interviews given by workers inside Rail Cargo Logistics and M-San Logistika.

⁷⁷ See differences among EU Member States in a vehicle taxation study done for the European Commission – TISpt, Study on vehicle taxation in the Member States of the European Union, Final report, January 2002, available at https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/vehicle_tax_study_15-02-2002.pdf (25.9.2018).

⁷⁸ Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, OJ L 115, 6.5.2015, pp. 1-10.

⁷⁹ See more on the issue of weights and dimensions in the EU at: https://ec.europa.eu/transport/modes/road/weights-and-dimensions_en (5.8.2018).

of an insufficient inspection system⁸⁰, several EU countries have recently introduced the system of built-in road vehicle weighing sensors for vehicles in movement (the so-called 'Weigh in Motion' – WIM), measuring and eventually automatically fining operators of the vehicles that infringe the norms from 1-30% of the prescribed weights.⁸¹ Croatia has not introduced the WIM technology yet, whereas road vehicle weighing at border crossings represents a routine and mandatory procedure. Due to the size of the vehicle and its tanks, the tolerated margin of oscillation in weight of a few hundred kilograms becomes important information with respect to the extra weight of possible clandestine passengers hidden within the vehicle.

Can we say that the road transport safety measure of vehicle weighing may be used as a measure in combating irregular migrations, smuggling and human trafficking? Not really, as the number of persons that can penetrate the truck and hide within its cargo space during voyage, thus altering the overall weight of the vehicle, is relatively small in most cases. Their weight would probably fall within the tolerable margin of the fuel (which can amount to around 1,000 kg for large trucks) and would therefore not be useful as a crime-combating measure in this respect. Illegal immigrants do not use buses for clandestine entries, since they may easily be detected by the driver and other personnel due to their appearance, lack of language skills and other features. Therefore, trains are first-choice vehicles for a larger number of migrants. Axle pressure measurements for trains are performed at marshalling yards in many cities, but not at the BCPs. Train scales are used in order for the carrier to ascertain the weight of the cargo carried, to calculate the freight, or for safety reasons related to the use of railway infrastructure. Due to extremely large weights of expandable train parts (e.g. the breaks), the weights of long train compositions can vary significantly; this measure can thus be perceived mainly as a transport safety measure, and not as a security measure in combating irregular migrations.

⁸⁰ Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic', COM(2013) 195 final/2, OJ C 327/133 of 12.11.2013, p. 135.

⁸¹ Hungary has lately introduced this system. It has been in full implementation since 1 July 2018. It will, allegedly, improve the enforcement of the rules on maximum weights from 2% to 50% of the vehicles. See: "Mađari uveli vaganje i kažnjavanje bez zaustavljanja", Kamion&Bus of 18 June 2018 at: <https://www.kamion-bus.hr/1588> (6.8.2018).

c. Scanners and cameras

Scanners are a widely used security measure used by the customs and the border police for two main purposes: to reveal false declaration of goods (the customs' competence) and to prevent crimes, such as smuggling of drugs, weapons, people, or artefacts within the legitimate cargo (the border police competence).⁸² There are many different types of scanners, depending on the scanned matter and the purpose of inspection. The use of scanners has recently become paramount with respect to land transport vehicles – trucks and trains – due to the massive flow of migrations through the region. Hence, governments of both the bordering countries involved, with or without financial support from the EU programs, have recently invested large funds in obtaining different types of new modern scanners for border controls. In 2018, Serbia reported over 20 different scanners distributed at all BCPs on the Xth corridor.⁸³ Since 2013, when Croatia entered the EU membership, additional 8 heart beat detectors, 41 device for CO₂ measurement and 8 endoscopes have been procured through the EU funds and used together with the existing equipment at all the BCPs with Serbia, Bosnia and Herzegovina and Montenegro. Apart from this, Croatian police forces have other types of equipment that are used for the control of vehicles in search of clandestine passengers, such as device for measurement of the density of the material, endoscopes and telescopic mirrors for (physical) inspection of the undercarriage and/or the upper side of the vehicle.⁸⁴ Thermographic and infrared cameras are used to detect living organisms inside the vehicle through their body temperature, showing the body shape and position.⁸⁵ Together with endoscopic cameras that can be inserted inside the cargo space without physical opening of sealed trucks and containers, infrared cameras provide the image of the interior. CO₂ scanners are inserted inside the cargo space in order to detect the presence of this gas produced by human breathing. They can therefore be used only in closed vehicles, such as cisterns, where there is no airflow.

⁸² "Model of Integrated Control at Border Crossings", ESCAP...pp. 8-9.

⁸³ Video report: Veselin Milošević, Assistant Director of the Customs Administration of the Ministry of Finance of Serbia, TIL conference at: <http://www.massmediainternational.rs/Video-TIL2018> (7.8.2018).

⁸⁴ Police report, see *supra* note 73.

⁸⁵ More on thermographic cameras in police use in Croatia see: Krišto, Mate, *Primjena termovizijskih sustava za nadzor granice, štićenih objekata i prostora*, MUP RH, at: http://www.inf.uniri.hr/files/datoteke/majam/Doktorski%20studij/mate_kristo_primjena_termovizijskih_sustava.pdf (8.9.2018).

The use of different scanners represents an efficient method of routine inspection of trucks and trains in order to detect and single out suspicious vehicles and subject them to more rigorous and detailed inspections by other methods. Since 2016-2017, trucks with sealed cargo space have been subjected to inspection by heartbeat detectors, which exist at all major Croatian BCPs opened for freight transport.⁸⁶ If heartbeat is detected, the truck is subjected to physical inspection of the cargo space, including breaking up of original seals on the container or truck door if they exist. Once an illegal migrant is discovered, the owner of the vehicle (transport company) becomes marked for good. Information regarding the vehicle, identity of a driver and the carrier are recorded in police archives and this vehicle (or other vehicles of the same carrier) is subject to inspection every time it tries to cross the border.⁸⁷

Another very effective technology in combating organised crime are gamma-ray or x-ray scanners for vehicles (the RTG), depending on the allowed level of radiation and the purpose of the inspection. In order to optimise the use of present equipment, and due to the fact that Croatian police forces at present have no RTG scanners, the scanners of the customs are used for police inspections as well.⁸⁸ The RTG scanners are used for (random) control of trucks both at the BCPs, as well as deeper within Croatian territory⁸⁹, where some of the trucks, according to the police assessment, are subjected to this inspection.⁹⁰ On the Serbian-Croatian border, one of the scanners is located at Bajakovo-Batrovci⁹¹,

⁸⁶ See Communication of 7 September 2018, MUP RH. The heartbeat detectors can detect all creatures with heart beat inside the vehicle, as small as a mouse. HRT video at: <https://vijesti.hrt.hr/406726/pripreme-za-schengen-u-punom-jeku> (8.9.2018).

⁸⁷ Information given by a border police officer on the occasion of the Police Day, Split, 27 September 2018.

⁸⁸ *Ibid.*

⁸⁹ The border police have jurisdiction to act also in depths of the territory of the state in order to detect and prevent illegal border crossing and all types of trans-border crimes. Art. 36 State Border Monitoring Act.

⁹⁰ Since 2017, trucks have been sent to the RTG at the BCPs according to police discretion, as well as randomly stopped along the highway, mostly on the Xth corridor, and subjected to the RTG scanning. During inspection, the driver of the vehicle steps out, and mobile RTG scanner-truck passes along the inspected vehicle while scanning. Although there is considerable concern for health hazard from radiation for truck drivers, highly alerting the International Road Union (IRU), recent studies have shown there is no occupational or health hazard involved from the RTG scanning of trucks. See: Prlić, Ivica, Scientific Study on External Ionising Radiation Exposure During Cargo/Vehicle Radiographic Inspections, Institute for Medical Research and Occupational Health, Zagreb, April 2012 at: <https://www.iru.org/sites/default/files/2016-01/en-x-ray-executivesummary.pdf> (9.9.2018).

⁹¹ Ristović Video-report, *supra* note 63.

the most important BCP between the two countries situated on the Xth corridor, and for that reason one of the two BCPs most endangered by the flow of illegal migrants along the Balkan route.⁹² The RTG scanners are not used for inspection of trains, nor are there information stating that Croatian police forces or the customs presently have such (expensive) technology for this mode of transport at their disposal.

Croatia aims at complying fully with the technical requirements for the entry into the Schengen area by the end of 2018, and being admitted into it before the end of the mandate of Juncker Commission in 2019.⁹³ In June 2017, Croatia joined the Schengen Information System (SIS)⁹⁴; in order to facilitate and speed up joining the Schengen, 120 million Euros from the EU funds have been allocated to it to procure state-of-the-art scanners, cameras and other technical devices necessary for the efficient control of the external borders of the EU.⁹⁵

⁹² The other one is the BPC Šid-Tovarnik on the same part of the Croatian-Serbian border. During 2018, there were numerous press releases on individual or small groups of illegal migrants, often families with children, discovered hidden in trucks. See Telegraf RS, Prikolica puna lešnika, a iz njih izronile glave migranata: Carinici na Batrovcima otkrili avganistansku porodicu u kamionu iz Turske, <http://www.telegraf.rs/vesti/hronika/2959116-prikolica-puna-lesnika-a-iz-njih-izronile-glave-migranata-carinici-na-batrovcima-otkrili-avganistansku-porodicu-u-kamionu-iz-turske-foto> (7.8.2018).

⁹³ Government of the Republic of Croatia, PM: Croatia aims to join the Schengen area and Euro zone, at <https://vlada.gov.hr/news/pm-croatia-aims-to-join-schengen-area-and-euro-zone/22687> (20/09/2018).

⁹⁴ European Commission, Croatia becomes part of the Schengen Information System (SIS), https://ec.europa.eu/home-affairs/news/croatia-becomes-part-schengen-information-system-sis_en (20.9.2018).

⁹⁵ Treaty of Accession of Croatia to the EU lists the entire Schengen *acquis* that needs to be implemented. See Annex II of the Treaty of Accession (Treaty between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union), OJ L 112, 24.4.2012, p. 10-110. Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

In 2018, Croatia reported on having spent almost the entire sum and acquiring substantial technical equipment necessary for complying with the Schengen requirements and efficient fight against organised crimes, contraband and tax frauds. Croatia has renewed its border crossing facilities and acquired various technical devices: police vehicles, radars, heartbeat scanners, drug and explosives detectors, toxic gas detectors, radiation pagers, devices for measuring the density of materials, etc.⁹⁶ However, the most important technical devices in combating irregular migrations were mainly procured as of 2017 – after the peak of the migrations had passed. In comparison, Hungarian national police purchased six heartbeat detectors in 2010 with a 75% contribution of EU funds, and started using them at borders with Serbia and Ukraine, checking 50% of the trucks entering Hungary in search of illegal migrants.⁹⁷ The EU experience and know-how, had evidently already existed during the peak and the aftermath of the migrant crisis on the Xth corridor, but the reaction in obtaining the efficient technology seems to be somewhat belated.

Notwithstanding this, the sophisticated technical equipment used at the BCPs along the Xth corridor from 2017 on, triggering increased efficiency in detecting clandestine entries by trains or trucks, resulted in redirection of the major flow of immigrants. Instead of using the Balkan route from Serbia to Croatia along the Xth corridor, immigrants are increasingly using the Eastern Mediterranean route through Albania, Montenegro and Bosnia and Herzegovina towards its most north-western border with Croatia, where at one point (near the Croatian town of Karlovac), there are only 70 km of Croatian territory between the borders with Bosnia on the one side and Slovenia on the other. Since Croatia has increased both the manpower and the technical equipment in controlling the blue and green border with Bosnia and Herzegovina (using e.g. drones with thermographic cameras), the pressure to cross border before winter is rising for migrants concentrated alongside this border, and many more were headed towards Western Europe by the end of 2018.⁹⁸

⁹⁶ “Pripreme za Schengen u punom jeku”, video-report, Croatian Radio-Television HRT on 24 September 2017 at: <https://vijesti.hrt.hr/406726/pripreme-za-schengen-u-punom-jeku> (8.8.2018).

⁹⁷ “Supply of a device for highly effective detection of persons hiding in vehicles, without vehicle disassembly”, EC- European and Home Affairs at: https://ec.europa.eu/home-affairs/financing/fundings/projects/project_example_029_en (8.8.2018).

⁹⁸ In autumn 2018, hundreds of illegal immigrants were detected crossing the mountains at western borders of Bosnia and Herzegovina with Croatia, with fear that this dangerous path might lead to deaths and humanitarian crisis when harsh winter in the region starts. See video report at: <https://www.jutarnji.hr/vijesti/hrvatska/iz-bosanskog-gss-a-snimili>

d. Security agencies

Although this is often considered confidential business information and hence rarely publicly disclosed, the thefts of cargo in railway transport, especially in container transport, has become a serious problem for the industry, according to Dušan Garibović, the CEO of Serbian rail cargo carrier "Srbija Kargo a.d."⁹⁹ Combined with the problem of migrants entering clandestinely into wagons or containers during voyage, railway carriers in the region launched an unprecedented practice in this mode of transport: hiring security agencies to accompany and monitor the trains, especially during the period of waiting before the BCPs. Garibović mentioned that this operator started outsourcing services of a security agency for their trains in July 2017, after having been confronted with serious problems of thefts and illegal migrants during the last couple of years. After that, in the period from August 2017 to March 2018, when this information was offered, both the thefts and the migrant incidents had ceased completely – there was not one single reported case.¹⁰⁰ A similar trend has been reported in Croatia too: there, "Rail Cargo Logistics – Croatia" is currently contemplating hiring security agency services to accompany the compositions of more valuable cargo to be carried by their trains in the near future. HŽ-Cargo, the dominant railway cargo carrier, is presently not contemplating this measure.¹⁰¹

It is fairly certain that the cost of hiring security agencies will eventually be reflected in the cost of transport service, which, in turn, might influence the competitiveness of local operators in the long run. Employing security agencies to escort vehicles is a well-known and widely used method, particularly in air and shipping industry. In air transport, in the aftermath of 9/11, armed air marshals started to board planes, increasing security standards during flights

kolone-migranata-pronasli-su-nove-ekstremno-opasne-rute-prema-hrvatskoj-bojimo-se-da-ce-nas-zima-dovesti-do-prave-drame/7822161/ (13.9.2018). The reports state there were around 60,000 people between Greece and Albania in mid-2018, whose only target was to reach Western Europe through this corridor in the forthcoming period. See Zabec, K., Čak 60.000 migranata preko nove rute stiže pred vrata Hrvatske! Ako pronadu slabu točku, u velikom smo problemu, možemo očekivati veliki proboj!, <https://www.jutarnji.hr/vijesti/hrvatska/cak-60000-migranata-preko-nove-rute-stize-pred-vrata-hrvatske-ako-pronadu-slabu-tocku-u-velikom-smo-problemu-mozemo-ocekivati-veliki-proboj/7352982/> (9.9.2018).

⁹⁹ Garibović, Dušan, video report of "Interactive Panel 2: Border crossings – procedures and examples of good/bad practice at "Transport & Logistics of South East Europe and Danube Region - TIL Conference", Belgrade 22 March 2018, available at: <http://www.massmediainternational.rs/Video-TIL2018> (28.8.2018).

¹⁰⁰ *Ibid.*

¹⁰¹ As stated by an HŽ Cargo officer who gave the interview.

and assisting the crew in case of security breaches or incidents.¹⁰² In shipping, serious and frequent attacks by Somali pirates to commercial vessels transiting the Gulf of Aden developed a whole new branch of services – those of heavily armed guards on board vessels, who provide a full-scale security services to the vessel while transiting the risk zone, and effectively deterring pirate attacks if and when they occur.¹⁰³ However, the practice of outsourcing armed guards to accompany the trains in transit is a brand new practice, boosted by two types of illegal- activities: thefts, which had been going on long before the migrant crisis in the region of South East Europe and did not lead to introducing any particular security measure outside railway industry itself, and irregular migrations as a very recent phenomena. It may be concluded that the latter problem was the last straw that forced the railway carriers to introduce costly solution to their everyday business in order to avoid lengthy detentions of trains at the borders and other collateral costs caused by the detection of migrants in wagons during routine police inspections, as well as to minimise the losses attributable to thefts.

5. THE IMPACT OF SECURITY MEASURES ON TRANSPORT INDUSTRY¹⁰⁴

Due to a very high risk of clandestine entries of illegal migrants in trains and trucks on the routes going through Croatia, the police inspections and methods used at Croatian road and railway BCPs are today undoubtedly much more stringent and sophisticated than they were in the period before 2015. What are the precise implications and costs of such a trend for transport industry? The analysis conducted on a specimen of 18 randomly chosen trains operating along the Xth corridor on the Tovarnik-Savski Marof route from Serbia to Slovenia (via Croatia) has shown that the average time spent on police inspections at the Serbian-Croatian border at the Šid-Tovarnik BCP is 53 minutes per train, while the average waiting time at the Croatian BCP in Savski Marof for Slovenian police inspection in Dobova BCP is 32 minutes per train. In the latter case, the train

¹⁰² For more details see: Fitzgerald, P. P., Air Marshalls - The need for legal certainty, *Journal of Air Law and Commerce*, 2010 (vol 75), p. 357.

¹⁰³ For more details see: Mudrić, M., The Guardcon contract, knock-for-knock clauses, DCFR and unfair terms (Part I), *The Journal of International Maritime Law*, vol. 21 (2015), pp. 51-62; Berglund, N., Shipowners arm to fight piracy, *Norway International Network*, January, 18 (2011); Mudrić, M., Armed Guards on Vessels: Insurance and Liability, *Journal of International Maritime Law*, vol. 50 (2011), no. 165, pp. 217-268; Martin, J. S., Fighting Piracy with Private Security Measures: When Contract Law should tell Parties to Walk the Plank, *American University Law Review*, vol. 59 (2010), p. 5.

¹⁰⁴ Some of the conclusions given in this chapter stem from the information given by officers in road and rail transport industry (as described *supra*), and will not be cited individually.

waits due to the police inspection of the previous train by Slovenian police¹⁰⁵, the time varying from no waiting at all (if there is no previous train) to as much as 3h 35min (if the inspection of the previous train has not started at all or if illegal immigrants have been discovered). The average time spent at Croatian entry and exit BCPs for the trains observed was 1h 37min in average.¹⁰⁶

Sources from railway industry speak of an increase in the time a train spends at the border crossing by a minimum of 30 minutes in average after the outbreak of migrant crisis. In other words, before 2015, a train had spent up to 30 minutes at both borders, whereas today, this takes a minimum of one hour (and more). The problem is that this can amount up to 3-4 hours of delay at a BCP for a particular train where illegal migrants are discovered, as well as for all the subsequent trains waiting behind it at the BCP, where problems for the train operators become even more serious. If illegal migrants are discovered inside a train, the train crew may be subjected to an interrogation procedure and wagons have to be sealed anew. If a passenger train arrives at the BCP in the meantime, it has priority, and the police officers (who are scarce) will leave the freight train waiting while performing the inspection of the passenger train, prolonging the waiting time. Furthermore, due to the organisation of railway transport and the division of operation and infrastructure on the market, as well as technological reasons of railway transport, at the border, compositions often have to change crew and locomotives, which then wait for a certain time at the border (e.g. two hours), and if the train does not come, they leave. However, the cost of their hire, amounting to thousands of Euros, still has to be paid by the operator whose train was belated without their fault. The train path that has been allocated to the operator of that particular train (that eventually cannot be operated) is then lost too, and the train, originally detained by the police for a couple of hours at the border due to anti-immigration procedures, will have to wait (and pay) for another locomotive, crew and train path in order to perform his contractual obligation. Waiting for the allocation of an extraordinary train path can last for more than a day on busy parts of the infrastructure. Overall delays in performing transport service are therefore increasingly becoming a serious problem for the operators, who are liable for the delay of cargo under the contract of carriage.¹⁰⁷ Although police inspections, due to an extraordinary migration crisis,

¹⁰⁵ Train driver is not allowed to stop the train between the state border and the BTC. Art. 22 State Border Monitoring Act.

¹⁰⁶ "Pregled zadržavanja vlakova na relaciji Tovarnik DG - Savski Marof DG", Excell document, Rail Cargo Logistics, 7 September 2018.

¹⁰⁷ According to Art. 23 (1) COTIF-CIM, "The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, the goods between the time of taking

amount to extraordinary circumstances and are beyond a carrier's control, he will inevitably suffer great extraordinary costs and possibly losses that he will probably eventually have to bear.

Although the infrastructure used in road transport differs very much from the one in railway transport, and indeed allows passing over the vehicles, the problems with delays at border crossings between Croatia and other countries for road carriers are the same. The delays are caused by detailed inspections of vehicles, especially trucks and busses, including several transport safety measures, but also new security police measures introduced as a direct consequence of the migrant crisis, as shown above. However, these procedures cause very long queues of trucks waiting at the BCPs to the Schengen area, especially on the working days. This is of particular importance for Croatia, since it is an EU Member, but not yet in the Schengen area.¹⁰⁸ Therefore, notwithstanding the inspections conducted by Croatian police forces and the customs on trucks, trains and their cargo while entering Croatia at the BCPs with Serbia, Bosnia and Herzegovina, and Montenegro, only a couple hours of transit later, even more detailed inspection procedures have to be performed again at the Slovenian or Hungarian borders, on the other side of the small country.¹⁰⁹ Since 2017, more

over of the goods and the time of delivery and for the loss or damage resulting from the transit period being exceeded, whatever the railway infrastructure used". Further on, if loss or damage results from the transit period being exceeded, the carrier must pay compensation not exceeding four times the carriage charge (see art. 33 (1) with regard to Art. 16 COTIF-CIM). Appendix B to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999, Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM).

¹⁰⁸ There is a special regulation that lays down rules governing border control of persons crossing the external borders of the Member States of the European Union. See Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ (2016) L 77, p. 1.

¹⁰⁹ Some authors wrote about the position of those Schengen candidate states and the problem their weak borders had caused to the EU. See Šegvić, S., *Šengenski režim upravljanja vanjskim granicama* (EU Schengen regime for administering EU external borders), *Zbornik radova Pravnog fakulteta u Splitu*, vol. 48 (2011), no. 1, pp. 13-14. After the 2016 Schengen evaluation of Croatia undertaken by the EU, the Council of the EU issued a Recommendation, in which it gave 21 recommendations with regard to police cooperation (with the neighbouring countries). See Recommendation on addressing the deficiencies identified in the 2016 evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of police cooperation, Brussels, 11 July 2017 (OR. en), Interinstitutional File: 2017/0055 (NLE).

stringent police controls at the Schengen borders¹¹⁰, queues forming in front of e.g. the BCP Bregana between Croatia and Slovenia can on the weekdays be over 10 km long, taking trucks many hours to cross. Waiting at the Bajakovo-Batrovci BCP with Serbia can be even worse, sometimes taking two days for a truck to pass the border. Road haulers are protesting, claiming that long waiting hours and idle time spent waiting at the BCPs cost them around 200 Euros per vehicle and day.¹¹¹ As regards the time needed for the customs and police procedures within the BCPs, the customs procedures at the BCPs after Croatian entry into the EU have been simplified and thus shortened, whereas police inspections are more detailed and lengthier than before 2015, resulting in more or less the same average time needed to cross the border for trucks – usually 30-45 minutes if there are no problems detected. Some of the routine customs and police procedures are done simultaneously and last around 30 minutes, including truck scaling, physical inspection and mandatory heartbeat detector inspection for sealed vehicles (lasting around 15 minutes). If a truck is subjected to the RTG scanning, this usually takes another 15-20 minutes.¹¹² However, if there is an extraordinary event, such as detection of illegal migrants inside the vehicle, the procedure for the truck in question can last for 3-4 hours and might stall all the other trucks waiting behind it if it does not get pulled alongside, which cases are not rare.¹¹³ That is probably caused by shortage of manpower in police forces, which cannot deal with the migrant incident and the subsequent procedures and at the same time perform inspections of other vehicles.

Nevertheless, there is room for improvement regarding work organisation at the BCPs, as all trucks have to wait together at all the BCPs in long queues, whether being empty or laden, or operating within the EU or in international transport. They all lose time and money, although there are substantial differences between them. The haulers operating only within the EU have no sealed cargo space, same as the haulers on return voyages with empty trucks. They can

¹¹⁰ During the migrant crisis, the EU had allowed some Member States, which were at the forefront of migrant waves, to keep their internal border checking (e.g. Austria, Germany, and Italy). See Council Implementing Decision (EU) 2017/818 of 11 May 2017 setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, OJ (2017) L 122, p. 73.

¹¹¹ Dimitrijević, A., Kontrole na Bregani sve veći gospodarski problem: dnevno se gubi na tisuće eura, at <https://vijesti.rtl.hr/novosti/hrvatska/2666941/kontrola-bregana-kamioni-gospodarstvo/> (20.9.2018). Also: Mandić, Nedo, video TIL conference, *supra* note 83.

¹¹² Interview with F. A., driver at logistic company "A", conducted in Zagreb on 7 September 2018.

¹¹³ *Ibid.*

hence easily open the cargo space for physical inspection by the police, making the whole procedure last for only a couple of minutes. On the other hand, the haulers in international transport have sealed cargo space, and have to be subjected to more sophisticated methods of the detection of the interior of that space, as elaborated *supra*. That is a much more time-consuming procedure, involving possible resealing of trucks, issuing new transport documentation, the RTG scanning, etc. Due to the differences between the two categories of haulers, it would be extremely useful to open separate lanes at the BCPs between Croatia and other EU countries: one for the EU operators and empty trucks, and the other for non-EU operators with laden and sealed trucks. Thereby, the passage for the former category would be substantially fastened, and the loss of time and money avoided.

A further very important factor affecting the time needed to cross borders is the EU social legislation in road¹¹⁴ and rail transport¹¹⁵ that sets stringent rules on mandatory rest and drive periods for the drivers and the crew. During rest time, the truck has to remain absolutely immobile, which gets recorded by the tachograph¹¹⁶, and is subject to later police inspections. Therefore, the truck driver waiting in front of the border crossing, whose rest time is due, has to remain immobile throughout this time and stop moving the vehicle towards the border, otherwise risking to be fined by the police during the following 28 days, in which logs have to be kept. If he has less than two hours working time left, he is not allowed to approach the BCP and enter within the restricted area. The loss of time for him to only cross the border amounts to more than 10 hours,

¹¹⁴ See Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (Text with EEA relevance), OJ L 102, 11.4.2006, p. 1.; Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, OJ L 80, 23.3.2002, p. 35.

¹¹⁵ Council Directive 2005/47/EC lays down working conditions for mobile workers engaged in interoperable cross-border services in the railway sector (Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, OJ L 195, 27.7.2005, p. 15).

¹¹⁶ A tachograph is a device that records the driving time, breaks, rest periods, and periods of other work undertaken by a driver. Council Regulation (EU) No 165/2014 on recording equipment in road transport provides the basis for the tachograph, but it also introduces the "smart tachograph", which will be installed in vehicles registered for the first time as of 15 June 2019.

not including the previous waiting time. In railway transport, the problem is similar: during waiting time at the BCP, the working hours of the crew can be over, forcing them to take the daily rest of 8 hours before continuing the voyage, even though the passage for the train had been cleared by the police and the train path might be secured. Idle time spent at the BCPs comes at a high cost too. According to Serbian Association of International Road Haulers, out of 22 working days, a driver working in the region spends as much as 7 days at border crossings. Due to this, the overall number of kilometres passed by a driver in the EU is 150,000, compared to 75,000-95,000 passed by a driver working on routes involving non-EU countries.¹¹⁷ This problem is particularly evident in non-EU countries hit by the migrant crisis. Those numbers mean as much as 50% less efficiency of the driver and his operator, which amounts to 50% less income, which in turn means much lower salaries for the drivers in the region. Therefore, there is no surprise that they are massively leaving to work in Germany and other EU countries within Schengen area, causing an alarming shortage of qualified drivers in road haulage industry in Croatia and other, non-EU countries, in the region. All the mentioned problems affect the countries along the Balkan and East Mediterranean routes, as well as road and rail operators working along these corridors. They are being slowed down and losing money, leaving the state with less taxes and lower import-export rate, as well as lower competitiveness of the transport industries. The consignees will inevitably try to avoid the transport corridors affected by the migrant crisis, opting for faster, although longer and more expensive alternative routes, but with smooth transport flows and predictable transport times.

6. CONCLUSION

The unprecedented trend of irregular migrations towards the EU is far from over. Although it might seem that these migrations are spontaneous and very elemental in their organisation, there is often some arrangement involved to provide highly paid services for migrants during their voyage, linking them directly to human smuggling. One of the longest migration routes in this part of the world involves the Western Balkan route and the Eastern Mediterranean route, both going through Croatian territory, which is still not a part of the Schengen area. The Balkan route is an already established route for other forms of organised crime, with established criminal networks and logistics in the area

¹¹⁷ Mandić, N., president of the Serbian Association of International Road Haulers, TIL Conference video *supra* note 83.

in search for new and easier opportunities, which they found in human smuggling and the THB. The latter crimes have lower penalties and (at least at the beginning of migrations) milder law enforcement than drug trafficking crimes, which fact has added to their appeal. The data of ten thousand missing children and women during migration through Croatia during the peak period of 2015-2016, with many reports of rapes and sexual abuse of the same vulnerable group (and many more unreported cases) indicates that there is also a strong link between irregular migrations, smuggling and the THB. There are no clear distinctions or lines to be drawn among the three crimes during the period of migration through Croatia as primarily a transit country. All of them, however, have a strong link to and exercise an impact on transport industry in the region.

The number of clandestine entries at the BCPs detected in the EU increased by 85% between 2009 and 2017, with the peak between 2014 and 2015, declining in 2016-17. However, due to the closed Hungarian border with Serbia, the migration flows diverted towards the Serbian-Croatian border after 2015, making a strong pressure on two BCPs in the region: Batrovci-Bajakovo and Šid-Tovarnik, where trucks and trains are used for clandestine entries.

The steep rise in the number of clandestine entries was detected at Croatian BCPs between 2016 (80) and 2017 (448)¹¹⁸, pointing towards land transport vehicles and the BCPs as points for irregular entry, opposed to previous migrations along the green and blue border. The reason for this can be found in stronger and technically more advanced control of the latter part of the border from 2014 on, when at the same time the BCPs, especially with respect to railway transport, were technically and technologically functioning in pretty much the same way as in time when there was no state border between the two states, making the clandestine entry and transport in train wagons fairly easy. Faced with strong pressure of irregular migrations at its eastern BCPs, the practice of only joint inspection of train compositions at the Serbian BCP in Šid by the crew of two train operators was abandoned, and a new Croatian BCP in Tovarnik was established, with a full range of police and customs procedures. Incidents with attempted clandestine entries by trains were very common from 2016 on. The industry was – and still is – lamenting about it as a tremendous problem in its everyday performance, but is unwilling to disclose any details on the extent thereof or the precise figures involved.

The research has shown that there is apparently no sophisticated technical equipment used for the inspection of trains entering Croatia (and the EU), com-

¹¹⁸ Izvješće o radu carinske uprave za 2017. godinu, *supra* note 55, p. 26.

pared to those used on trucks at the BCPs. The physical inspection of all wagons with breaking seals on laden wagons in the whole composition remains the main and only method used, as well as (occasionally) unloading and reloading wagons full of suspicious cargo, where migrants might be hidden. New police instructions as to the stowing of certain types of cargo in wagons, e.g. timber and boxes, leaving empty passages between piles, make the cargo exposed to damage during transport and increase a carrier's exposure to damage. Notwithstanding its efficiency, physical inspection as the primary security method in combating crime has numerous negative impacts on railway industry in the region. The physical inspection of entire train compositions, sometimes involving unloading and reloading of wagons full of cargo, resealing of wagons and filling out transport documents prolongs the time needed for crossing the Croatian border for trains compared to the period before 2015 for 30 minutes in average. However, the average total time needed for crossing the border before was 30 minutes, whereas now, it can be between 40 minutes and a couple of hours. The time often depends on the kind of cargo carried, as well as on the problems incurring to the previous train detained at the border. Such oscillations, combined with problem of work and rest time for the crew, make it hard for the operator to plan the timetable of the train and procure the train path. The delays at this border, therefore, incur further delays in the continuation of transport through other countries (the availability of locomotive, crew and train path if the ones originally planned were lost due to the delay), making the choice of the railway transport in the region far less attractive than before. The persisting problem of cargo thefts, combined with the recent problem of illegal migrants in railway transport, has led to the introduction of a new security measure in railway transport – the outsourcing of security agencies providing physical protection to trains and their cargo. It seems that armed guards are spreading through air and sea transport to land transport as well, but for reasons different from those in the former modes of transport. The initial experiences by the Serbian railway carrier are extremely positive – in the first six months of their employment, the number of thefts and migrant incidents have been brought to zero. It is unclear whether they are physically accompanying the train throughout its voyage through a particular country or whether they are located at certain train stations and border stations, where there is a higher risk of these types of crime. In the former case, particular problem is the accommodation of armed guards on freight trains that would respect labour rights of guards around the clock, as well as enable them to physically secure the train composition outside the area of train stations. Further research and monitoring of this phenomenon is needed, as some operators in the region are contemplating introducing the same

measure, whereas others are not. The reported cases of migrants discovered within the originally sealed wagons in Croatia suggest possible involvement, either voluntary or involuntary, of a consignor's or an operator's crew present during loading and sealing at the place of origin in another country, which might be an indication of the possible creation of opportunistic smuggling networks outside the original criminal milieu. However, the same occurrence might be caused by long periods needed for loading a train composition, where sealing all of the wagons occurs at the end of the loading process, enabling migrants to hide within the cargo of previously loaded wagons without any help from the outside. These being only indications, there is need for further research regarding this point, as well as future experiences regarding armed guards in railway transport. This research has shown, though, that the physical inspection of train compositions at borders as the only security measure combating irregular migrations and smuggling is insufficient and time-consuming, heavily hindering the normal reeling of railway transport in the region and causing further loss of its competitiveness. This may hardly be overcome alone by the industry, which is already struggling with other problems.

Given the fact that the EU funds for the protection of the long EU border in Croatia are highly available at this stage of its accession to the Schengen area, it would be recommended to supply and include advanced scanning technologies, such as the RTG and infrared scanners, to railway transport as well. Road freight transport, on the other hand, is also heavily stroke by long delays due to new and sophisticated police inspections at the BCPs, especially along the Xth corridor. Besides the pre-existing inspection procedures, new scanners introduced after 2016 (after the peak of the migrations in the region had already been over) include mandatory use of heartbeat detectors (adding minimum 15 min inspection time per truck), as well as the RTG and CO2 detectors, unsealing trucks for physical inspection, etc. The average prolongation of time spent per truck at the BCPs for regular inspection is around 30 min, yet the overall waiting time (especially at the Croatian-Serbian border) can amount to over 20 hours, leading to the fact that for the transport route of one day, three working days are lost (including the empty return voyage). Police security measures applied to road haulage industry are effective though slow, but the transport safety measures of weighing (axle pressure and overall weight) cannot be used for the detection of illegal migrants due to allowed oscillations. Haulage industry engaged in international transport between the EU and non-EU countries in the region is rapidly losing competitiveness due to the fact that approximately one third of working days are lost on idle waiting time at the BCPs. This cannot be charged to the

consignor, which finally results in a smaller profit and the loss of skilled drivers moving to work within the Single Market.

The organisation of police work at the BCPs leaves room for improvement, too. Presently both laden and empty trucks, as well as the EU and non-EU transport operations (going from Croatia westwards) are waiting in a single line for inspection, although empty trucks and containers are subjected only to physical inspection, which is a lot faster than respective procedures for laden trucks. Introducing separate lanes for these two categories would greatly improve the flow of road freight transport and lead to the enhanced competitiveness of transport industry in the region, leading in turn to a higher export-import rate of the countries in the region. Finally, due to the stringent police inspections of both railway and road transport at the Croatian BCPs along the Xth corridor, the migration flows in 2018 have diverted from the Western Balkan to the Eastern Mediterranean route, with larger groups of migrants concentrating along the western border of Bosnia and Herzegovina with Croatia, near the towns of Cazin and Bihać, where there is a thin part of Croatian territory of only 70 km between the Bosnian and Slovenian border. The attempts to cross this green and blue border over dangerous mountain route will inevitably close with the arrival of harsh winter, steering migrants inevitably more towards clandestine entries by trucks at the BCPs in the region. The nearest railway BCP of Volinja is rarely used, so the possibility of clandestine entries by trains can be expected at the BCPs in the northern part of the Bosnian border. Faced with smaller, but still ongoing irregular migrations in the region counting tens of thousands of persons, Croatia's ambition to enter the Schengen area by the end of 2018 remains highly questionable. On the other hand, strengthening police procedures at the eastern EU borders at Croatian BCPs do yield results in combating irregular migrations, but leave disastrous consequences to land freight transport industry along the Xth corridor, with unforeseen effects for the economy of the states in the region. It would therefore be of utmost importance for all the stakeholders involved to further study these phenomena and improve some of the procedures and processes of the police, the customs and the operators, to everyone's benefit.

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Sažetak:

UTJECAJ IREGULARNIH MIGRACIJA, KRIJUMČARENJA I TRGOVANJA LJUDIMA NA KOPNENU TRANSPORTNU INDUSTRIJU: SLUČAJ HRVATSKE

Velika migrantska kriza, koja se zadnjih nekoliko godina prelijeva preko cijele Europe, ostavila je traga i na Hrvatsku. Relativno mala država u jugoistočnoj Europi koja leži na dva važna transportna koridora – paneuropskim koridorima Xa i Vb, našla se tako i na dva velika migrantska koridora: zapadno-balkanskom i mediteranskom koridoru. Posljedica toga najbolje se ogleda u činjenici da je preko Hrvatske u samo zadnjih nekoliko godina prešlo više od pola milijuna ljudi (i evidentirano preko 20 000 ilegalnih migranata), koji su često pronađeni skriveni u kamionima i vlakovima na graničnim prijelazima između Republike Hrvatske i Srbije, Bosne i Hercegovine, ili Mađarske.

Ovaj rad bavi se pitanjima utjecaja ovog fenomena na transportnu industriju, a posebice na teretni prijevoz kopnom, kako u Hrvatskoj tako i u cijeloj regiji JI Europe. U tom smislu, u radu su analizirani regionalni trendovi iregularnih migracija na ovom području koji su dovedeni u vezu s uvođenjem novih sigurnosnih mjera (u okviru graničnog pregleda kamiona i vlakova) od strane policije i sveukupnom izvedbom pružanja usluga cestovnog i željezničkog prijevoza (robe) u ova osjetljiva vremena.

Ključne riječi: iregularne migracije; krijumčarenje; cestovni prijevoz; željeznički prijevoz; neovlašteni prelazak granice; skeneri; balkanska ruta; euro-mediteranska ruta; granični prijelazi; Šengen; policijske inspekcije; sigurnosne mjere u prometu; mjere zaštite u prometu.